

Facsimile Transmittal

RECEIVED
CENTRAL FAX CENTER

JAN 27 2006

Faxed to Robin A. Hylton

Fax Number 571-273-8300

Faxed From M. Kusz

Number of pages including this sheet 13

Date 01-27-06

Comments Application 10/672,741

Response to Detailed Action
dated January 9, 2006

Certificate of Facsimile

I hereby certify that this correspondence for Application Serial No. 10/672,741 is being facsimiled to the U.S. Patent and Trademark Office via fax number (571) 273-8300 on the date shown below:

Maximillian Kusz

Name of person signing this certificate

Signature

Maximillian Kusz

Date

01-27-06

Number of pages faxed

13

(including this page)

RESPONSE TO DETAILED ACTION

Elections/restrictions

1. Per telephone conversation with the examiner it has been made clear that the structure of one embodiment is obvious in view of the other and it is necessary to overcome the rejection of claim 1 so that elevating and retaining means can be considered in depending claims as separate embodiments of one teaching in this invention.
2. No response required.
3. The applicant is submitting a complete reply without cancellation of claims 10-19 and requests that the examiner consider this response under the other appropriate action provision stated therein. The applicant reserves the right to file a petition for review of the restriction requirement at a later date.

Drawings

4. No response required.

Claim Rejections -35 USC 102

5. No response required.
6. The rejection of claims 1-5 and 7 rejected as being anticipated by Hakim in the US 3,157,302 is disputed by the applicant. It is clear that patent 3,157,302 issued to Hakim teaches a package that has a dual operating system that must be manipulated to both close and open the package as presented in the specification. See column 1 lines 10-15 and 27-29. He describes the steps required for closing the container as necessitating the alignment of the plurality of geometric slots at the periphery of the closure with corresponding projections on the interior of the container; passing the closure downwardly past these projections; then rotating the closure so the cooperating threads can engage and drive the closure to its fully closed position. See column 2 lines 49-53. Opening the package is accomplished by performing the closing steps in the reverse order. See column 2 lines 55-60. It is significant that the Hakim 3,157,302 patent requires that multiple steps be performed sequentially to open the dual lock package disclosed. The fact that the Hakim disclosure uses threads as retaining and elevating mechanisms for the second of two closing systems does not preclude the use of threads in any

subsequent invention involving packaging. The Hakim 3,157,302 patent did not teach nor seek to patent screw threads.

The disclosure in application 10/672,741 differs from the Hakim 3,157,302 patent in that it seeks to teach the use of elevating means, such as but not limited to screw threads, to move the closure out of engagement with independent retaining means, such that rotating the closure a sufficient number of degrees with respect to the container, moves the closure upwardly past the retaining means to open the package.

In Hakim 3,157,302 the mere act of rotating the closure with respect to the container will not open the package. A further alignment of the geometric slots and projections must be accomplished to allow the closure to be lifted from the container to open the package.

The inclusion of the second lock that must be in alignment to open the package is an integral structure of his disclosure. Also the Hakim 3,157,302 patent specifically states in its specification, column 2 lines 15-20, and claims, column 3 lines 12-16 and lines 23-25, that when the closure has been fully unscrewed from the container it is below the lugs at the mouth of the container and requires that the closure be manually oriented and lifted to pass by these lugs, column 2 lines 59-60.

The teaching in application 10/672,741 that is novel and unique is a package comprising a container, and a "plug" type closure that cannot be grasped. The package is opened by rotating the closure with respect to the container causing cooperating elevating means on the closure and container to move the closure upwardly with respect to the container causing the retaining means to be disengaged by the action of the elevating means, thus opening the package. The cooperating means that retain the closure within the container are shown as bead 28 in FIGS 5 and 10 on the container and the top 12 of the closure as shown in FIG.5. This engagement between the cooperating retention means is overcome by operation of any elevating means that move the closure upwardly, with respect to the container, when the closure is rotated. The elevating means can be cooperating screw threads on the closure and container as shown in FIG. 5 but the elevating means are not limited to screw threads. Further elevating means shown as ramp 22 and 23 in FIG. 7 on the container and cooperating spline 27 in FIG. 8 on the closure though different in structure will function as screw threads, to act as elevating means.

To summarize, the Hakim 3,157,302 patent teaches a dual locking package having cooperating screw threads on the container and closure being one of these locks and having a second lock comprising geometrically shaped openings in the top of the closure that that must be aligned with similar geometrically shaped lugs in the container during the sequential two step opening process to remove the closure from the container. The disclosure in application 10/672,741 teaches the use of elevating means such as, but not limited to, screw threads to move the closure upwardly with respect to the container thereby moving the closure upwardly out of engagement with independent retaining means to open the package, when the closure is rotated with respect to the container. The intrinsic retaining means exhibited by screw threads, to retain the closure within the container, is not a consideration in the teaching of application 10/672,741. The retaining means referred to in the teaching and used to retain the closure within the container are located at or near the mouth of the container and they are independent of and spaced from, the elevating means and do not require orientation of the closure with the container to open the package.

7. The position taken by the examiner that "As previously set forth, the retention means are the threads" and that claims 8 and 9 were anticipated by the Hakim 3,157,302 patent are disputed by the applicant.

One cannot inspect the 10/672,741 application and upon finding threads being disclosed conclude that the inventor is claiming that the engagement of the threads on the closure and container are the retaining means for retaining the closure within the container. Specifically, the threads are not the retaining means referred to in this disclosure, however, the threads but are one form of the elevating means in this disclosure. In fact, total absence of contact between the upper side of the closure threads with the under side of the container threads will not result in the package being open if the closure is positioned below the retention bead at the mouth of the container. The retention bead on the container must be over come to open the package. One cannot compare the Hakim 3,157,302 patent with application 10/ 672,741 and logically conclude that at the time of the Hakim invention it would have been within the ordinary skill of one to anticipate that one could accomplish the teaching of 10/672,741 for the reasons stated as follows:

A) Hakim specifically states in the specification that the retention means at the mouth of the container is composed of a plurality of geometrically shaped lugs. To overcome these lugs, one is directed to orient the similar geometrically shaped openings on the closure with these lugs and lift the closure upwardly past these lugs. A comparison of these lugs to the retention bead in application 10/672,741 reveals that they are not similar in form or function. The Hakim 3,157,302 patent specifically states "The lugs include lower sides 34 occupying, preferably, a common horizontal plane." Column 2 lines 2-4. Examination of drawing FIG. 4 shows that the bottom surface of the lug is at a right angle to the container sidewall and assumed to be in the same plane as the two other lugs. This configuration prevents the closure from being cammed past the lugs and the closure must be properly oriented with the container for removal. It is pure speculation to arbitrarily decide that one skilled in the art would be capable of altering the bottom surface of the lugs to a rounded shape as shown in the drawings of application 10/672,741. But even if one were to conclude that one skilled in the art would design lugs with rounded bottom surface, there is no device, disclosed in the specification, to provide the force to cam the closure past these lugs. To include such a device goes far beyond the specification and the teaching of the Hakim 3,157,302 patent which specifically states that the closure to move vertically when disengaged from the threads, see column 2 lines 17-25.

B) Hakim specifically states in the specification that the retention means at the mouth of the container is composed of a plurality of geometrically shaped lugs. To overcome these lugs, one is directed to orient the similar geometrically shaped openings on the closure with these lugs and lift the closure upwardly past these lugs. A comparison of these lugs to the retention bead in application 10/672,741 reveals that they are not similar in form or function. The Hakim 3,157,302 patent specifically states "In initial placement of the closure 14 on the receptacle 12, the corresponding lugs and openings are aligned and the body 40 is dropped into place..." column 2 lines 49-51. The closure of this patent must be oriented to the container as part of the closing while the closure in the 10/672,741 has no such requirement. How one skilled in the art would have modified the package having lugs and openings, as described in the specification and the patent claims, such that orientation of the closure was not necessary is not divulged by Hakim nor is it speculated at by the applicant.

C) The examiner states that "To the degree the threads are not seen as a continuous bead, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the threads of an engaging bead since the examiner takes Official Notice of the equivalence of threads and beads for their use in the closure art and the selection of any of these known equivalents to secure a closure to a container would be in the level of ordinary skill in the art." While there is agreement that there is equivalence between threads and beads, this equivalence is not universal, and is dependant upon the specific application. In a specific case where only retention is required a thread or bead may be used interchangeably. However, should the specific case require the helical nature of threads to function as an elevating device, then beads and threads are not interchangeable. It is common practices to start at the prior art and speculate at how equivalent structures could have been substituted to arrive at the proposed art. One skilled in the art at the time of the Hakim 3,157,302 patent could not have substituted a bead(s) for the threads shown in the drawings and arrived at the 10/672,741 application in either form or function. No other threads nor is a bead shown in the drawings or description of the Hakim 3,157,302 patent other than the thread used to retain the closure in the closed container shown in FIG. 1 as 36 and 44. Further, the threads are shown in the drawing as being spaced a considerable distance down from the mouth of the container and are described as such in the specification, column 2 lines 15-20, and claims, column 3 lines 12-16 whereas the bead in the 10/672,741 specification and claims are specifically described and shown as being at or near the mouth of the container. Therefore, equivalence of beads and threads to being used as a basis to determine that claims 8 and 9 in the 10/672,741 application are obvious in view of the Hakim 3,157,302 patent by one of ordinary skill in the art is not borne out by interchange of the thread specified in Hakim 3,157,302 with a bead.

8. The suggestion by the examiner that claim 6 be considered for inclusion in the independent base claim is appreciated. However, it is the applicant's position that the teaching put forth in application 10/672,741 as stated in the specification and independent claim (1) as disclosed is novel and unique and is not taught or anticipated by the Hakim 3,157,302 patent. Therefore inclusion of the elements in claim 6 are not believed to be necessary to overcome prior art. It is anticipated that the examiner will find the

arguments over Hakim 3,157,302 be convincing and therefore agree that independent claim 1 stands as previously presented.

9.-12. No response required.

The applicant acknowledges and is thankful for the help in the form of explanations, references, and suggestions given by the examiner throughout this application process.



Maximilian Kusz